Supreme Court, U.S.
FILED
JAN 7 2000
CLERK

No. 99-990

In The

Supreme Court of the United States

JOSEPH SPENCER,

Petitioner,

v.

KNAPHEIDE TRUCK EQUIPMENT COMPANY, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

DALE H. CLOSE* (19336)
LISA S. MORRIS (43181)
ROBERT M. SCHIEBER (37486)
Legal Advisor's Office
Kansas City Police Department
1125 Locust Street
Kansas City, Missouri 64106
(816) 234-5056
FAX (816) 234-5333

Attorneys for Respondents Board of Police Commissioners of Kansas City, Missouri

Counsel of Record

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

BEST AVAILABLE COPY

PARTIES TO THE PROCEEDINGS

Although Petitioner Joseph Spencer (Spencer) has listed Knapheide Truck Equipment Company and Knapheide Manufacturing Company in the caption of his Petition, all claims against those parties were settled prior to Spencer's appeal to the Eighth Circuit Court of Appeals. This action involves only those claims against the Board of Police Commissioners of Kansas City, Missouri (Board), a state agency and the governing agency of the Kansas City, Missouri Police Department (Department). As such, Board suggests that Spencer has failed to follow the provisions of Supreme Court Rule 34.1(d) for identifying the correct parties in the caption of the case.

TABLE OF CONTENTS

Page

Parties to the Proceedings i

Table of Contents..... ii

Table of Authorities iii

Jurisdiction..... 1

Statement of the Case 1

Argument as to Why Petition Should Be Denied ... 8

Conclusion 13

TABLE OF AUTHORITIES

Page

CASES

City of Canton, Ohio v. Harris, 489 U.S. 378 (1989) 9

Cross v. City of Des Moines, 965 F.2d 629 (8th Cir. 1992) 11

Farmer v. Brennan, 511 U.S. 825 (1994) 11

Hunter v. Bryant, 502 U.S. 224 (1991) 11

Monell v. New York Dept. of Social Services, 436 U.S. 658 (1978) 8

OTHER

Supreme Court Rule 10 ..... 1, 10, 12, 13

Supreme Court Rule 14(g) 2

Supreme Court Rule 34.1(d) i

Title 42, United States Code, Section 1983 1

JURISDICTION

Board does not disagree with the jurisdictional basis in law set out by Spencer in this case, however, Board does believe that under the provisions of Supreme Court Rule 10, there are no compelling reasons to grant the Petition. There is no decision entered by the Eighth Circuit Court of Appeals in this case which conflicts with the decision of another United States court of appeals decision; there is no decision in this case on an important federal question which conflicts with a decision by a state court of last resort; there is no departure from the accepted and usual course of judicial proceedings by any court; there is no decision in this case by a state court of last resort; and there is no decision by a court of appeals on an important question of federal law which conflicts with or has not been decided or settled by this Court. This case is one which involves Title 42, United States Code, Section 1983 (Section 1983) liability of governmental officials in their official capacity. Board suggests that this Court's jurisprudence on the subject is clear and well-settled, and based on the facts of this case, need not be further considered by this Court.

In sum, there is no compelling reason for granting Spencer's Petition, and this Court should not exercise its judicial discretion to do so.

STATEMENT OF THE CASE

Board disagrees with many of the statements contained in Spencer's statement of the case and suggests that Spencer has not complied with the provisions of

Supreme Court Rule 14(g) in that Spencer's Petition does not contain a "concise statement of the case setting out the facts material to consideration of the questions presented . . . " Board suggests that the facts contained in the District Court's Order in this case concisely set out the factual background. Those facts appear on pages 12a and 13a of the Petition for Writ of Certiorari filed by Spencer and are as follows.

"[Spencer] claims that he was injured on January 30, 1992, while being transported in a Kansas City, Missouri Police Department wagon. The patrol wagon was operated by third-party defendant Trusler, who was at that time a police officer for the Kansas City, Missouri Police Department.

On January 30, 1992, Officer Trusler was assigned to patrol wagon duty. Responding to a call to transport a prisoner arrested by another officer, he drove his patrol wagon to the location where [Spencer,] the prisoner, had been arrested. Officer Trusler handcuffed [Spencer] with his hands behind his back and escorted him to the rear of the patrol wagon. [Spencer] sat on one of the benches which ran along the sides of the wagon's interior.[1] There were no seat belts installed in these benches.

At one point during the drive to the police station, Officer Trusler, while stopped at a red light, observed [Spencer] attempt to stand and to then fall. Officer Trusler

---

[1] Officer Trusler contends that he twice instructed [Spencer] to sit on the floor of the police wagon, but that [Spencer] did not comply. [Spencer,] however, asserts that he was never instructed to sit on the floor. For purposes of this motion this factual dispute is immaterial.

continued driving until he reached the station, where he stopped the vehicle. When he opened the wagon's door to escort [Spencer] out of the vehicle, [Spencer] stated that he was too drunk to move and requested assistance exiting the wagon and entering the station. Even with Officer Trusler's assistance, however, [Spencer] was unable to stand or walk. Officer Trusler then, in accordance with police procedure regarding arrestees too intoxicated to stand or walk on their own, brought [Spencer] to Truman Medical Center, where it was determined that [Spencer's] medical condition was much worse than supposed. [Spencer] has been substantially limited in his motion since this time; he has been rendered a quadriplegic and is confined to a wheelchair.

Prior to January 30, 1992, the police department had used the same type of patrol wagons – a Knapheide utility body mounted on a truck chassis – for approximately ten years. In the 1970s, the Board purchased a number of patrol wagons from another company; the design specifications for the patrol wagon bodies were contained on each of the purchase orders. In 1979, the Board solicited bids for the purchase of seven patrol wagon bodies with design specifications identical or substantially similar to those previously purchased, and Knapheide Truck[2] was awarded the contract. From that time until 1992, Knapheide Manufacturing manufactured

---

[2] At that time Knapheide Truck Equipment Company was doing business as Adolph-Knapheide Truck Equipment Company.

the truck utility bodies and Knapheide Truck, a distributor for several manufacturers of truck bodies and equipment, sold the truck utility bodies to the department."

Throughout Spencer's statement of the case, Spencer recites extensive facts concerning the history of the design and bidding process and the history of this case as it pertains to the Knapheide entities. Board suggests that none of these facts are before this Court and in addition, are not relevant to any finding to be made by this Court should it decide to exercise its discretion to accept the case.

In addition to the undisputed facts as set out by the District Court, Board would like to respond to a number of other statements made by Spencer which Board believes are misstatements of fact. First, Spencer contends that "the department developed specifications for a motor vehicle that would suit it's (sic) needs," referring to a new style of patrol vehicle. (Petition for Writ of Certiorari, page 5) Later, Spencer states that "Board had it's (sic) design and was looking for a company to build it for them." (Petition for Writ of Certiorari at page 6) As the District Court correctly noted in its Memorandum and Order, Spencer presents some evidence that Knapheide Trucking participated in designing the wagons. (See Petition for Writ of Certiorari at page 27a) Board and Knapheide presented extensive evidence that the design of the patrol wagon was done by representatives of Knapheide. In any case, as suggested above, Board does not believe that this issue is material to the determination of the issues before this Court.

Spencer then erroneously states that no one checked to insure that the vehicle conformed with federal safety standards and no consideration was given to prisoner safety, citing a Department employee who stated that safety was not a concern. (Petition for Writ of Certiorari at page 6) First, the Department employee actually stated in his deposition in response to a question concerning what would happen to someone being transported in a wagon if there was an accident, "I don't think that that was a primary consideration." At no time did the employee state that safety of prisoners was not a concern. Board's reason for not wanting seat belts in the patrol wagons was itself a safety issue and was based on concerns by members of the Department that seat belts would be used as weapons both against officers and by prisoners against each other. (Petition for Writ of Certiorari at page 18a) In addition, Board's policies – both the ones alleged by Spencer to have been enacted in 1984 and the ones referred to by the District Court enacted in 1991 – show that Board was concerned about the safety of prisoners being transported in patrol wagons. (Petition for Writ of Certiorari at 8, 17a and 19a)

Spencer additionally alleges that when asked about seat belts, the Department told Knapheide that "they did not want them." (Petition for Writ of Certiorari at page 6) Spencer fails to tell the entire story. As the District Court correctly noted Spencer presented evidence that although the Department informed Knapheide that they preferred not to install seat belts, a representative of the Department told Knapheide that if federal or state regulations required the installation of seat belts, the Department

certainly wanted to comply. (See Petition for Writ of Certiorari at page 27a and 28a)

Spencer then lists fourteen persons who alleged that they were injured while being transported in a patrol wagon between 1980 and August of 1991. (Petition for Writ of Certiorari at page 7) Board suggests that these unsubstantiated and unverified complaints received of minor injuries allegedly suffered as a result of being transported in a patrol wagon over a period of eleven (11) years do not establish that Board had notice of any prior serious injuries occurring in patrol wagons. The District Court thoughtfully considered the issue of the relatively minor injuries which had occurred prior to January, 1992 and the remedial measures taken by Board. The District Court noted that fourteen (14) injuries over a twelve (12) year period, with only one alleged to have resulted in hospitalization, was insufficient to constitute a pattern of prior constitutional violations or deliberate indifference to a strong likelihood of resulting harm.

Spencer continues by suggesting that Board put procedural instructions into place in 1984 directing wagon drivers to use caution in transporting prisoners and directing officers to seat prisoners at the front of the wagon. (Petition for Writ of Certiorari at page 8) Spencer then cites eight additional complaints over the next seven years and alleges Board took no further remedial action. As the District Court correctly noted in its Memorandum and Order, Board issued directives in 1991 concerning where arrests should be seated, referring to those directives as the "seating policy adopted in 1991." (Petition for Writ of Certiorari at 17a and 19a) The sole injury following the 1991 directives by Board was Spencer's.

Spencer states that on the way to the police station in the patrol wagon, he was thrown forward and rendered quadriplegic. (Petition for Writ of Certiorari at page 8) This is not an undisputed fact. It was Trusler's testimony, quoted in the District Court's opinion, that Trusler observed Spencer stand up and then fall in the back of the wagon while he was on the way to the police station. This unsubstantiated allegation should not be considered by this Court.

Spencer spends some time discussing the issue of seat belts, and the lack thereof, in the patrol wagons; discussing whether the patrol wagons were busses which were exempt from the seat belt requirement; and discussing who made the decision not to put seat belts in the patrol wagons. Board would suggest to the Court that these issues are relevant to Knapheide and the decision as to whether Knapheide was entitled to summary judgment, and not relevant to Board and the issues before this Court.

Finally, Spencer presents to this Court a lengthy discussion of the trial strategy, settlement options and conclusions concerning the cost of Spencer's care in relation to the amount of money he has received to date in this case. Board suggests that this information is not appropriately included in a statement of the facts of this case. However sympathetic Spencer's situation may be, it is not relevant to the legal issues in this case nor to any determination of whether the legal issues presented by the case are worthy of this Court's review.

ARGUMENT

I.

In his first point, Spencer begins by arguing that both the District Court and the Court of Appeals for the Eighth Circuit applied the wrong standard for determining Board's liability in this case. Spencer seems to suggest that the entire design and manufacture of the patrol wagons was done by Board, an inaccurate representation as suggested above in Board's Statement of the Case, and additionally suggests that Board's policies compounded the danger. Spencer suggests that this Court should review his case to affirm *Monell v. New York Dept. of Social Services*, 436 U.S. 658 (1978) and clarify the standards of culpability for municipalities. Board agrees with Spencer that his is a simple case. (See Petition for Writ of Certiorari at page 14.) It presents no complex or unanswered questions of Section 1983 jurisprudence. For this reason, Spencer's Petition should be denied.

Although Spencer seems to be challenging the use of deliberate indifference as the standard to be applied to the facts of this case, in his appellate brief filed in this case, he stated that "[t]he Board's decision to purchase patrol wagons devoid of seat belts, padding or any other provisions for prisoner safety, combines with their policy on handcuffing prisoners, transported in the wagon, demonstrates a **deliberate indifference** to his plight. . . ." The Eighth Circuit Court of Appeals noted in its opinion that "Spencer concedes that deliberate indifference is the correct standard to apply in this case." (See Petition for Writ of Certiorari at page 5a) Spencer also seems to be attempting to allege that he is something other than a

convicted prisoner and something other than a pre-trial detainee. Board suggests that these are the two categories established for persons arrested by the police and that the law does not provide a separate standard for an arrestee. Deliberate indifference was the correct standard in this case and the standard was correctly applied by both the District Court and the Court of Appeals.

Finally, Spencer seems to be suggesting that his case should be analyzed under the theory set out in *City of Canton, Ohio v. Harris,* 489 U.S. 378 (1989), that is, that liability in this case should be based upon Board's disregard of obvious needs. Spencer alleges that his injuries were a plainly obvious consequence of an inadequate municipal policy. (See Petition for Writ of Certiorari at page 16) Board suggests that the District Court considered Spencer's argument; considered the holding of *Canton, supra* (see Point II, *infra*); considered Spencer's argument concerning the subjective and objective components of the deliberate indifference standard; and correctly concluded that Spencer could not establish the deliberate indifference of Board under either standard. Indeed, the United States Court of Appeals for the Eighth Circuit discussed the issue and found that whether applying a subjective or objective standard of deliberate indifference, Spencer still failed to prove conduct by Board which rose to the level of deliberate indifference. (See Petition for Writ of Certiorari at pages 6a and 7a)

Finally, Board suggests that Spencer has failed to establish any compelling reason in this point of his argument for this Court to review the decision of the Court of Appeals for the Eighth Circuit in this case. Spencer has cited no split of authority nor any other justification other

than some alleged misapplication of a properly stated rule of law. Although Board does not believe that any rule of law was misapplied in this case, Board suggests that Supreme Court Rule 10 states that this Court will rarely grant a petition on this basis. There is no basis upon which to make an exception to that rule in this case.

II.

In this point Spencer appears to again be repeating the same argument as he attempts to allege in Point I, that is, that the District Court and Court of Appeals applied the wrong standard, specifically by requiring Spencer to prove a prior pattern of serious injuries in order to show that Board had notice, rather than requiring Spencer to merely show that Board disregarded an obvious need. The District Court acknowledged in its opinion that notice need not be shown where the inadequacy is so likely to result in a constitutional deprivation that the policy makers can be said to have been indifferent to the need. (See Petition for Writ of Certiorari at page 16a) The District Court did consider that argument in its Order. In order to assess whether the risk of injury was so likely to result in a constitutional deprivation, one must necessarily look to see what was occurring relative to injuries in patrol wagons. This is what the District Court did when it discussed what injuries had occurred and the severity of those injuries. Because the arguments of Spencer were fully considered by the lower courts, there is no compelling reason presented in this point which would justify granting the Petition.

III.

Spencer's argument in Point III largely rests on misstatements of facts as argued by Board in their Statement of the Case. Spencer alleges that there were no further remedial actions taken after the alleged first six injuries in the patrol wagon, referring presumably to the 1984 directives issued by Board. As the District Court correctly noted in its opinion, Board issued directives in 1991, just prior to Spencer's injury concerning seating positions in the patrol wagons. (See Petition for Writ of Certiorari at page 17a and 19a) "Rather than demonstrating apathy or unconcern, these policies represent affirmative steps to prevent injury in the patrol wagons. While the precautions taken by Board may have failed and while this failure might constitute negligence, the evidence does not support the conclusion that the policy of transporting handcuffed prisoners in patrol wagons was deliberately indifferent to prisoner's physical well-being." (See Petition for Writ of Certiorari at page 17a-18a) The District Court followed the law as set forth by this Court in *Farmer v. Brennan*, 511 U.S. 825 (1994), and there is no basis in law to disturb those findings. Spencer suggests that a jury should have decided this issue of fact, rather than the District Court. Board would suggest that the trial court is capable of determining as a matter of law what is reasonable in regard to remedial measures. *See generally, Hunter v. Bryant*, 502 U.S. 224, 227-28 (1991) and *Cross v. City of Des Moines*, 965 F.2d 629, 632 (8th Cir. 1992) (holding that if there is no genuine issue as to any material fact pertaining to the objective reasonableness of the defendant's action, then the defendant is entitled to judgment as a matter of law.). It is well-settled that issues of law are

for the judge, not the jury. The findings of the District Court and the Court of Appeals in this case were appropriate and should not be disturbed.

Spencer has not presented a compelling reason under Rule 10 in Point III to justify the granting of his Petition.

IV.

In Spencer's last point, he once again suggests that the issues in this case should have been decided by a jury, not a judge, and that acceptance of this case will allow this Court to give guidance on the role of the summary judgment in Section 1983 cases. (See Petition for Writ of Certiorari at 19)

Board believes that the issues decided by the lower courts in this case were issues of law. It is proper for the judge to rule on issues of law. Board additionally suggests that the law governing summary judgment is well-settled, and there is no basis under Rule 10 of the Supreme Court Rules to grant certiorari in order to consider this well-settled area of the law.

Once again, Board suggests that Plaintiff has not presented a sufficient basis which would justify review of this case by this Court and again respectfully requests that the Petition be denied.

CONCLUSION

For all of the reasons set out herein and because Spencer has not provided the Court with a compelling reason to grant the Writ under Rule 10 of the Supreme Court Rules, Board respectfully suggests that the Court deny Spencer's Petition for Writ of Certiorari.

Respectfully submitted,

DALE H. CLOSE* (19336)
LISA S. MORRIS (43181)
ROBERT M. SCHIEBER (37486)
Legal Advisor's Office
Kansas City Police Department
1125 Locust Street
Kansas City, Missouri 64106
(816) 234-5056
FAX (816) 234-5333

Attorneys for Respondents

**Counsel of Record*